

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way
Employees

vs

Burlington Northern Santa Fe

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Case 16/Award 16

Statement of Claim

Claim of the System Committee of the Brotherhood that:

1. That the discipline of a ten (10) day suspension, and the removal of foreman and assistant foreman seniority, and the two (2) years' restriction from bidding on foreman and assistant foreman positions which were imposed on Mr. A. J. Terrones for alleged violation of Maintenance of Way Operating Rule 20.3.1 on August 6, 1994 was arbitrary, capricious and on the basis of unproven charges.

Background

The Claimant was advised on August 8, 1994 to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged failure to properly place anchors on track behind the tie gang he was supervising which resulted in a track buckling on August 6, 1994. The alleged incident occurred near Alliance, Nebraska. After an investigation was held on August 29, 1994 the Claimant was advised that he had been found guilty as charged. He was assessed a ten (10) day suspension, removed from any foreman or assistant foreman position, and restricted from bidding on such foreman positions for a period of two (2) years.

This discipline was appealed in the proper manner on property under Section 3 of the Railway Labor Act and the operant Agreement up to and including the highest Carrier officer designated to hear such. Absent settlement of this claim on property it was docketed before this Board for final adjudication.

Discussion & Findings

The Claimant to this case held position of track Foreman in the month of August of 1994. During the first week of that month he was in charge of mini-tie gang TP-32 which was replacing ties on track near East Alliance, Nebraska. On August 6, 1994 the track buckled where gang TP-32 had been working the week prior to this date. The buckle was observed as a coal train was approaching this point in the track. The train underwent emergency procedures in order to stop prior to derailling on the buckled track. The train was able to stop just in time to avoid a derailment. The train was loaded with coal.

Subsequent investigation of the track which was buckling showed that rail anchors had not been replaced after they had been removed when gang TP-32 had been working on this section of track. According to testimony at the investigation by the General Roadmaster, he observed the track buckle on main track No. 1 east of Alliance, Nebraska at approximately MP 362 in his investigation after the coal train has stopped. He testified that a number of rail anchors were missing on new ties which had been just installed and that this was the "...cause of the track buckle...". There were insufficient anchors to "...properly restrain the rail...". According to the General Roadmaster, the ballast

condition at the site was standard and sufficient. In testimony by the Claimant he states that the track anchors in the area of the track in question were not up to standard.

Although there are intimations in defense of the Claimant to this case that other crews may have been responsible for the track anchor problem, the Board is not persuaded that this is what happened here. The track had been repaired by a crew directly under the supervision of the Claimant and that crew had been negligent in replacing track anchors which had been removed during the repair. For this the Claimant must be held totally responsible. Nor is there any alternative explanation, which is reasonable, to warrant conclusion that the buckle in the track was caused by anything other than the failure of the Claimant's track crew from replacing the anchors which had been removed. Clearly, a major derailment was avoided by the attentiveness of the engineer of the coal train and a track inspector, both of whom saw the buckle in this section of the track almost simultaneously.¹ Reasonable minds can but conclude that replacing track anchors when they are removed to do track repairs is a procedure which is so fundamentally basic that the actions by supervision in assessing discipline in this case cannot be faulted by this Board.

The Claimant here is charged with violation of the following Rule.

¹Coincidentally a track inspector was proceeding east on track No. 2 at the location and the coal train was proceeding west on track No. 1 and both observed the buckle at about the same time on track No. 1 as the coal train was nearing it at about MP 362.

Rule 20.3.1


Track foreman are in charge of and responsible for:

- * The safe condition of tracks, roadways, and right of way under their charge.
- * The economical use of labor, material, and equipment.

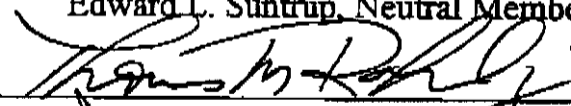
Upon basis of the full record before it the Board can but conclude that the Claimant is guilty as charged. The claim is denied. The Board has reviewed the Claimant's prior record. In view of this and the severity of the infraction at bar in this case the Board will rule that the Carrier's assessment of discipline here was neither arbitrary nor capricious and the Board must rule accordingly.

Award

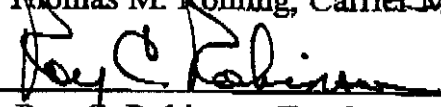
The claim is denied.



Edward L. Suntrup, Neutral Member



Thomas M. Rohling, Carrier Member



Roy C. Robinson, Employee Member

Date: 10/10/01